IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6864 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

ISHAKBHAI A MUNSHI

Appearance:

MR KN RAVAL for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 17/02/2001

ORAL JUDGEMENT

#. Gujarat State Road Transport Corporation through its Divisional Controller (hereinafter referred to as the petitioner) has filed this petition challenging the award made by the Industrial Tribunal, Baroda on 27.1.1988 whereby the Tribunal interferred with the order of

punishment imposed on the delinquent - respondent herein.

#. In all, there were six charges against the respondent workman, which are as under:-

(i). On 2.3.1979, the delinquent was onduty as a driver on Ankleshwar route. However, without leave being sanctioned or without taking prior approval of the superior officer, he remained absent.

(ii). On 13.6.1979 a bus bearing number 6958 was under repair in the Workshop. The delinquent quarelled with the Mechanic and threatened with abuses.

(iii). On 24.6.1979, the delinquent was asked to take delivery of vehicle No. 5254. The Head Mechanic asked him to come for delivery after the vehicle is ready. Even at that time, he quarelled with the Head Mechanic by raising false pretext and behaved in a manner which a workman would not behave in ordinary circumstances.

(iv). On 25.10.1978, the delinquent was in the workshop for getting the punctured tyre repaired, and at that time also he quarelled with one Mr. A.M. Todiwala, the Vehicle Examiner and abused him. The delinquent was about to assault the said Mr. A.M. Todiwala.

(v). On 17.4.1979, under a false pretext, he tried to assault one R.M. Bodiwala by saying that he was getting late. He took the lever of handbrake on hand for delivering a blow.

(vi). On 24.5.1979 at Bharuch depot he abused and threatened Shri Namekwala, a Mechanic, and behaved in an indecent manner.

#. For five out of the six aforesaid charges, explanation was called for and minor punishments were inflicted in accordance with law. However, with regard to the last incident wherein he misbehaved with Shri Namekwala on 24.5.1979 at Bharuch Depot, the punishment imposed was that of stoppage of increment with future effect.

#. With regard to the minor punishments, learned advocate appearing before the Tribunal did not raise any dispute and accepted the same. The Tribunal arrived at a conclusion that the incident took place in the manner as alleged. It appreciated the evidence and arrived at a conclusion that the findings were in accordance with the evidence and the minor contradictions which were pointed out were not required to be taken into consideration, as the same were natural. The Tribunal also observed that

if exact similar version would have been given by the witnesses, it would be stated that it is a parrot-like version. The Tribunal accepted the evidence, and, therefore, this Court would not like to refer to the nature of the evidence.

#. The Tribunal considered the default card wherein on various occasions the delinquent was involved in committing breaches. It is a fact that different instances were before the Tribunal and within a short duration on several occasions the delinquent committed breaches. From the record it appears that the delinquent was in the habit of picking up quarrels on flimsy ground with superiors and used to pick up anything lying around to assault others. In such a situation, it would become difficult for other staff members to work and render services with efficiency. The Tribunal arrived at a conclusion that for the incident in question, stoppage of increment for one year is appropriate, however, it should be for that year only and should not be with future effect.

#. The Tribunal has not considered the totality of the circumstances in the instant case. Discipline requires that persons working in a public sector are acting in such a way that they do not cause obstruction or disturbance to other employees in discharging their duties. If the delinquent was not satisfied with the work of others, it was his duty to make a complaint in writing to the superior officer, but he cannot pick up a quarrel and lift anything lying around for assaulting others. The Tribunal has erred in interfering with the punishment imposed by the authority. In the instant case it appears that the learned advocate did not request the Tribunal for other punishment and confined his application with regard to the incident which took place on 24.5.1979. The Tribunal ought to have seen the fact that earlier incidents did not wipe out by merely granting concession by the learned advocate with regard to the earlier incidents. It was the duty of the Tribunal to interfere if it was necessary to invoke section 11.A of the Industrial Disputes Act, and not otherwise. When there is cogent evidence before the Tribunal with regard to the conduct of the workman indicating that the workman was in the habit of committing misconduct may be with a view to show that he is a strong person. The Tribunal has not applied its mind with regard to the aspects of discipline and with regard to the earlier incidents and totality of circumstances. Therefore, the Tribunal was not required to interfere with the order in question. Therefore, this

order cannot be said to be an order sustainable in the eyes of law.

#. So far as interference is concerned, the workman was employed somewhere in 1966. the incident is of 1979 and the Industrial Tribunal delivered the order on 27.1.1988. In view of the long intervening period and in view of the fact that by now the workman must have been superannuated, this Court would not like to interfere with the order but before parting with this order, it is required to be conveyed that the Tribunals should take serious note of the totality of the circumstances while interfering with the orders passed by the disciplinary authorities. With this observation, this petition is rejected. Rule is discharged; No order as to costs.

csm./ (B.C. PATEL, J.)